

BEFORE THE
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation against:)

WALTER THEODORE BAIRD)
4939 Garfield Street)
La Mesa, CA 91941)

Civil Engineer License No. C 31429,)

Respondents.)
_____)

Case No. 861-A

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board for Professional Engineers and Land Surveyors as its Decision in the above-entitled matter.

This Decision shall become effective on September 10, 2010.

IT IS SO ORDERED August 11, 2010.

Original Signed

BOARD FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
Department of Consumer Affairs
State of California

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 G. MICHAEL GERMAN
Deputy Attorney General
4 State Bar No. 103312
110 West "A" Street, Suite 1100
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 861-A

12 **WALTER THEODORE BAIRD**
13 **4939 Garfield Street**
La Mesa, CA 91941
14 **Civil Engineer License No. C 31429**

OAH No. 2009121267

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 Respondent.

16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
17 entitled proceedings that the following matters are true:

18 PARTIES

19 1. David E. Brown (Complainant) is the Executive Officer of the Board for Professional
20 Engineers and Land Surveyors (Board). He brought this action solely in his official capacity and
21 is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,
22 by G. Michael German, Deputy Attorney General.

23 2. Respondent Walter Theodore Baird (Respondent) is represented in this proceeding by
24 attorney Thomas J. Castonguay, whose address is 1031 Fernview Street, El Cajon, CA 92020.

25 3. On or about August 14, 1980, the Board issued Civil Engineer License No. C 31429
26 to Walter Theodore Baird (Respondent). The Civil Engineer License was in full force and effect
27 at all times relevant to the charges brought in Accusation No. 861-A and will expire on December
28 31, 2010, unless renewed.

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1 15. Respondent further stipulates that the Board has jurisdiction to impose a public
2 reprimand upon his license to practice civil engineering pursuant to section 495 of the Business
3 and Professions Code.

4 16. In consideration of the foregoing admissions and stipulations, the parties agree that
5 the Board may, without further notice or formal proceeding, issue and enter the following
6 Disciplinary Order:

7 **DISCIPLINARY ORDER**

8 IT IS HEREBY ORDERED THAT Civil Engineer License No. C31429 heretofore issued
9 to Respondent shall, by way of letter from the Complainant, be publicly reprimanded. Said letter
10 of public reprimand will issue as set forth herein above and shall be in the same form as the letter
11 attached hereto as Exhibit "B."

12 IT IS FURTHER ORDERED THAT within ^{30 DAYS} ~~two years~~ from the effective date of the
13 decision, Respondent shall:

14 a. Fully reimburse the Board for its investigative and enforcement costs incurred in the
15 prosecution of this matter in the amount of \$ 3,000.00.

16 b. Successfully complete, pass and provide the Board with verifiable proof of passing a
17 course in professionalism and ethics for engineers, or college level engineering course, approved
18 in advance by the Board or its designee, at his own cost;

19 c. If Respondent fails to comply with either of the requirements set forth under paragraphs
20 a and b, above, the Board shall deem Respondent's notice of defense to be withdrawn, and
21 Accusation No. 861-A shall be deemed unchallenged by Respondent, all its charges and
22 allegations shall be deemed admitted, and the Board shall enter a default decision against
23 Respondent, revoking Respondent's Civil Engineer License No. C 31429.

1 ACCEPTANCE

2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
3 discussed it with my attorney, Thomas J. Castonguay. I understand the stipulation and the effect
4 it will have on my Civil Engineer License. I enter into this Stipulated Settlement and Disciplinary
5 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
6 of the Board for Professional Engineers and Land Surveyors.

7
8 DATED:

6/10/2010

Original Signed

WALTER THEODORE BAIRD
Respondent

11 I have read and fully discussed with Respondent Walter Theodore Baird the terms and
12 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
13 I approve its form and content.

14 DATED:

June 10, 2010

Original signed

THOMAS J. CASTONGUAY
Attorney for Respondent

17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
19 submitted for consideration by the Board for Professional Engineers and Land Surveyors of the
20 Department of Consumer Affairs.

21 Dated:

June 10, 2010

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General

Original Signed

G. MICHAEL GERMAN
Deputy Attorney General
Attorneys for Complainant

28 SD2009804355

Walter Theodore Baird
4939 Garfield Street
La Mesa, CA 91941

RE: Public Reprimand
In the Matter of the Accusation Against: Walter Theodore Baird, No. C31429
Case No. 861-A

Dear Mr. Baird:

On November 25, 2009, the Board of Professional Engineers and Land Surveyors, Department of Consumer Affairs, State of California, filed an Accusation against your license to practice civil engineering, alleging unprofessional conduct under Business and Professions Code sections 6749(a)(4) and 6775(c), in connection with your entering into a written contract on March 25, 2002, to complete a grading plan at 2046 University Avenue in San Diego, California.

Taking into consideration the fact that you have been licensed by the Board since 1980, that the conduct in question took place more than eight years ago, and that there are other mitigation circumstances in this case which support the determination that you are competent to practice civil engineering, the Board has decided that the charges warrant a public reprimand.

Accordingly, pursuant to the authority provided under Business and Professions Code section 495, and in resolution of this matter, the Board of Professional Engineers and Land Surveyors, Department of Consumer Affairs, State of California, hereby issues this letter of public reprimand.

Sincerely,

DAVID BROWN
Executive Officer
Board of Professional Engineers and Land Surveyors
Department of Consumer Affairs
State of California

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
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6 Telephone: (619) 645-2617
Facsimile: (619) 645-2061
7 *Attorneys for Complainant*

8 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 861-A

12 **WALTER THEODORE BAIRD**
13 **4939 Garfield Street**
La Mesa, CA 91941
14 **Civil Engineer License No. C 31429**

A C C U S A T I O N

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. David Brown (Complainant) brings this Accusation solely in his official capacity as
19 the Executive Officer of the Board for Professional Engineers and Land Surveyors, Department
20 of Consumer Affairs (Board).

21 2. On or about August 14, 1980, the Board issued Civil Engineer License Number C
22 31429 to Respondent Walter Theodore Baird. The license was in full force and effect at all times
23 relevant to the charges brought herein and will expire on December 31, 2010, unless renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the Board under the authority of the following
26 laws. All section references are to the Business and Professions Code unless otherwise indicated.

27 4. Section 118 of the Code) states, in pertinent part:

28

(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

5. Section 6749 of the Code states, in pertinent part:

(a) A professional engineer shall use a written contract when contracting to provide professional engineering services to a client pursuant to this chapter. The written contract shall be executed by the professional engineer and the client, or his or her representative, prior to the professional engineer commencing work, unless the client knowingly states in writing that work may be commenced before the contract is executed. The written contract shall include, but not be limited to, all of the following:

....

(4) A description of the procedure that the professional engineer and the client will use to accommodate additional services.

....

6. Section 6775 of the Code states, in pertinent part:

....

By a majority vote, the board may reprove, suspend for a period not to exceed two years, or revoke the certificate of any professional engineer registered under this chapter:

....

(c) Who has been found guilty by the board of negligence or incompetence in his or her practice.

....

(g) Who in the course of the practice of professional engineering has been found guilty by the board of having violated a rule or regulation of unprofessional conduct adopted by the board.

(h) Who violates any provision of this chapter.

7. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

1 8. Section 419 of the Title 16, California Code of Regulations states, in pertinent part:

2 For violations of Business and Professions Code sections 6775 and/or
3 8780 which result in an order issued in accordance with Chapters 4.5 and 5 of Part 1
4 of Division 3 of Title 2 of the Government Code against a professional engineering
 and/or a professional land surveying license, the following provisions shall apply to
 disciplinary orders contained in decisions of the Board:

5 (a) The minimum disciplinary order shall be reproof. The maximum
6 disciplinary order shall be revocation of the license.

7 (b) If warranted by extenuating and/or mitigating factors in the matter, the
8 disciplinary order may be stayed by an express condition that the respondent comply
9 with probationary conditions. The minimum time period in which the respondent
 shall have to comply with the conditions shall be two years. For purposes of this
 section, this time period shall be known as the "period of probation."

10 (c) All decisions containing stayed disciplinary orders as described in
 subdivision (b) shall include the following probationary conditions:

11 (1) The respondent shall obey all laws and regulations related to the
12 practices of professional engineering and professional land surveying.

13 (2) The respondent shall submit such special reports as the Board may
 require.

14 (3) The period of probation shall be tolled during the time the respondent
15 is practicing exclusively outside the state of California. If, during the period of
16 probation, the respondent practices exclusively outside the state of California, the
 respondent shall immediately notify the Board in writing.

17 (4) If the respondent violates the probationary conditions in any respect,
18 the Board, after giving the respondent notice and the opportunity to be heard, may
19 vacate the stay and reinstate the disciplinary order which was stayed. If, during the
20 period of probation, an accusation or petition to vacate stay is filed against the
 respondent, or if the matter has been submitted to the Office of the Attorney General
 for the filing of such, the Board shall have continuing jurisdiction until all matters are
 final, and the period of probation shall be extended until all matters are final.

21 (5) Upon successful completion of all of the probationary conditions and
22 the expiration of the period of probation, the respondent's license shall be
 unconditionally restored.

23 (d) All decisions containing stayed disciplinary orders as described in
 subdivision (b) may include one or more of the following probationary conditions:

24 (1) The respondent's license shall be suspended for a period not to exceed
25 two years. If a suspension of the license is ordered, it shall begin on the effective date
 of the decision.

26 (2) Within 60 days of the effective date of the decision, the respondent
27 shall successfully complete and pass the California Laws and Board Rules
28 examination, as administered by the Board.

1 (3) The respondent shall successfully complete and pass a course in
2 professional ethics, approved in advance by the Board or its designee. The
3 probationary condition shall include a time period in which this course shall be
4 successfully completed which time period shall be at least 60 days less than the time
5 period ordered for the period of probation.

6 (4) Within 30 days of the effective date of the decision, the respondent
7 shall provide the Board with evidence that he or she has provided all persons or
8 entities with whom he or she has a contractual or employment relationship such that
9 the relationship is in the area of practice of professional engineering and/or
10 professional land surveying in which the violation occurred with a copy of the
11 decision and order of the Board and shall provide the Board with the name and
12 business address of each person or entity required to be so notified. During the period
13 of probation, the respondent may be required to provide the same notification of each
14 new person or entity with whom he or she has a contractual or employment
15 relationship such that the relationship is in the area of practice of professional
16 engineering and/or land surveying in which the violation occurred and shall report to
17 the Board the name and address of each person or entity so notified.

18 (5) The respondent shall provide verifiable proof to the Board that
19 restitution has been paid as ordered. The probationary condition shall include a time
20 period in which the verifiable proof shall be provided to the Board which time period
21 shall be at least 60 days less than the time period ordered for the period of probation.

22 (e) In addition to the conditions as may be ordered pursuant to
23 subdivisions (c) and/or (d), the following conditions shall be included for the
24 following specific violations:

25 (1) Incompetency in the practice of professional engineering and/or
26 professional land surveying:

27 (A) The respondent shall successfully complete and pass, with a grade of
28 "C" or better, a minimum of one and a maximum of three college-level courses,
approved in advance by the Board or its designee. Such courses shall be specifically
related to the area of violation. For purposes of this subdivision, "college-level
course" shall mean a course offered by a community college or a four-year university
of three semester units or the equivalent; "college-level course" does not include
seminars. The probationary condition shall include a time period in which the
course(s) shall be successfully completed which time period shall be at least 60 days
less than the time period ordered for the period of probation.

(B) The respondent shall take and achieve the passing score as set by the
Board for the second division examination (including the seismic principles and
engineering surveying examinations for civil engineers), provided that in the event
the respondent holds multiple licenses, the Board shall select the examination in the
area of practice of professional engineering and/or professional land surveying in
which the violation occurred and in the area of professional engineering and/or
professional land surveying in which the respondent is licensed. The Board or its
designee may select the specific examination questions such that the questions relate
to the specific area of violation and comprise an examination of the same duration as
that required of an applicant for licensure. The respondent shall be required to pay the
application fee as described in Section 407 and shall be afforded all examination
appeal rights as described in Sections 407, 443, and 444. The probationary condition
shall include a time period in which the examination(s) shall be successfully
completed which time period shall be at least 60 days less than the time period
ordered for the period of probation.

1 (C) During the period of probation, the respondent may practice
2 professional engineering and/or professional land surveying only under the
3 supervision of a professional engineer and/or professional land surveyor licensed in
4 the same branch as the respondent. This person or persons shall be approved in
advance by the Board or its designee. Such supervising professional engineer and/or
professional land surveyor shall initial every stamped or sealed document in close
proximity to the respondent's stamp or seal.

5 (2) Negligence in the practice of professional engineering and/or
professional land surveying:

6 (A) The respondent shall successfully complete and pass, with a grade of
7 "C" or better, a minimum of one and a maximum of three college-level courses,
8 approved in advance by the Board or its designee. Such courses shall be specifically
9 related to the area of violation. For purposes of this subdivision, "college-level
10 course" shall mean a course offered by a community college or a four-year university
of three semester units or the equivalent; "college-level course" does not include
seminars. The probationary condition shall include a time period in which the
course(s) shall be successfully completed which time period shall be at least 60 days
less than the time period ordered for the period of probation.

11

12 In addition to the disciplinary orders described in this section, all
13 decisions shall address recovery of the Board's investigation and enforcement costs,
as described in and authorized by Business and Professions Code section 125.3.

14 Notwithstanding this section, non-conforming terms and conditions may
15 be included as part of the disciplinary order, including such other further or lesser
action as the Board deems appropriate, in the interest of protecting the public health,
safety, and welfare.

16 As used in this section, 'license' includes certificate of registration or
17 license as a professional engineer, licensure as a professional land surveyor, and
certificates of authority to use the titles 'structural engineer,' 'geotechnical engineer,'
18 'soil engineer,' 'soils engineer,' or 'consulting engineer.'"

19 9. Section 473.3 of the Regulations states, in pertinent part:

20 (a) If a cited person who has been issued an order of abatement is unable
21 to complete the correction within the time set forth in the citation because of
22 conditions beyond his/her control after the exercise of reasonable diligence, then
he/she may request from the Executive Officer an extension of time within which to
complete the correction. Such a request shall be in writing and shall be made within
23 the time set forth for abatement.

24 (b) Failure of the cited person to abate the violation or to pay the fine
within the time allowed is grounds for suspension or revocation of the cited person's
25 license.

26

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Negligence and Incompetence in the Practice of Professional Engineering)**

3 10. Respondent is subject to disciplinary action under Code section 6775(c) in that he
4 demonstrated negligence and incompetence in the practice of professional engineering. The
5 circumstances are as follows:

6 a. On August 19, 2002, the Enforcement Unit of the Board for Professional
7 Engineers and Land Surveyors received a complaint, dated August 14, 2002, from M.B. against
8 Respondent. The complaint alleged that on March 25, 2002, M.B. and Respondent entered into a
9 written contract to complete a grading plan at 2046 University Avenue in San Diego, California.

10 b. On September 29, 2005, the Board sent the complaint to independent Technical
11 Expert John Rogers, a licensed civil engineer. On August 28, 2006, the Board received Rogers'
12 August 23, 2006 expert report. In Rogers' opinion, Respondent was negligent and incompetent in
13 the practice of Professional Engineering as follows:

14 1. Respondent lacked understanding of the City of San Diego's requirements for a
15 private grading plan.

16 2. Respondent failed to include specific topographic and existing conditions
17 information on the plan.

18 3. Respondent's field notes and other recorded documents correctly noted the
19 property line, but the grading plan did not.

20 c. Additional review of the complaint revealed Respondent's contract did not
21 include a description of the procedure to be used to accommodate additional services.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Failure to Include Description of Procedure for Accommodating Additional Services)**

24 11. Respondent is subject to disciplinary action under Code section 6775(h), in
25 conjunction with Code section 6749(a)(4), in that the contract he entered into described in
26 paragraph 10 failed to include a description of the procedure to be used to accommodate
27 additional services.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Violation of Regulation: Failure to Comply with Citation Order)**

3 12. Respondent is subject to disciplinary action under Code section 6775(g), in
4 conjunction with section 473.3 of the Regulations, in that he failed to timely pay the fine assessed
5 in Citation Order 5136-L, issued to Respondent on April 11, 2003. The citation was issued after
6 an investigation revealed Respondent did not meet the standard of care in his engineering
7 performance by specifying both a heater and a fireplace chase and flue, and a nonexistent six-inch
8 inside diameter flue on a second-storey addition to a home with an existing fireplace.

9 **OTHER MATTERS**

10 13. To determine the degree of penalty, if any, to be imposed on Respondent,
11 Complainant alleges that in addition to the prior discipline described in paragraph 12, Respondent
12 was issued Citation Order 5030-L on July 7, 1999, which became final on September 30, 1999.
13 The citation was issued after an investigation revealed Respondent had violated Code sections
14 8762(d) and (e), 8763, and 8767, by failing to perform his land surveying duties in a manner
15 complying with the standards of that profession. Respondent failed to file a record of survey
16 within the time period required by law after setting monuments. When Respondent did submit a
17 record of survey, he failed to file it in the form required, and failed to resubmit it in the time
18 period required by law, although he eventually did comply with the Citation Order.

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1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a
4 decision:

5 1. Revoking or suspending Civil Engineer License Number C 31429, issued to Walter
6 Theodore Baird.

7 2. Ordering Walter Theodore Baird to pay the Board for Professional Engineers and
8 Land Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to
9 Business and Professions Code section 125.3;

10 3. Taking such other and further action as deemed necessary and proper.

11
12 DATED: 11/25/09

Original Signed

13 DAVID BROWN
14 Executive Officer
15 Board for Professional Engineers and Land Surveyors
16 Department of Consumer Affairs
17 State of California
18 *Complainant*

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